IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

MISC. CIVIL APPLICATION (REVIEW) NO. 123 OF 2007
IN
WRIT PETITION NO. 775 OF 1997

Maharashtra Rajya Krishi Vidyapeeth
Kamgar Assop, Regd. No.NGP-390
by its Chairman Shri Manohar
Bhimraoji Chaudhari, r/o Radha Nagar,
Amravati, Tq. & Dist. Amravati. ... APPLICANT

Versus

1. Dr. Punjabrao Deshmukh Krishi
   Vidyapeeth, Krishi Nagar, Akola,
   Tq. & Dist. Akola.

2. The Member, Industrial Court,
   Amravati.

3. In charge Officer, R.R. Centre,
   Dr. Punjabrao Deshmukh Krishi
   Vidyapeeth, Amravati. ... RESPONDENTS

Shri S.G. Loney, Advocate for the applicant.
Shri A.R. Patil, Advocate for respondents No. 1 & 3.
Shri T.R. Kankale, AGP for respondent No.2.

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CORAM : B.P. DHARMADHIKARI, J.
DATE OF RESERVING THE ORDER : MARCH 22, 2007.
DATE OF PRONOUNCING THE ORDER : APRIL 06, 2007.
ORDER :

Writ Petition No. 775/1997 is allowed by me on 12/12/2006 after hearing the present Respondents (Employer University) who were Petitioners therein. Challenge in the writ petition was to the order dated 20/12/1996 passed by Industrial Court directing Petitioners to pay equal wages to 54 members of present Applicant Union on the basis of "equal pay for equal work". Said order has been set aside after observing that these 54 employees had no right to post or no right to claim regularisation and there was no question of any sympathetic attitude towards them in the matter. Earlier in other Writ Petitions No. 2736, 2737 and 2738 of 1995 decided along with Writ Petitions No. 953 and 955 of 1996 on 31/8/2006, direction given by Industrial Court to pay wages at par by following doctrine of equal pay for equal work in relation to employees on daily wages working with Municipal Council, Wardha, has been set aside by me after referring to various judgments of Hon'ble Apex Court. In view of said judgment dated 31/8/2006 and the judgments of Hon'ble Apex Court Writ Petition No. 775/1997 filed by Employer has been allowed on 12/12/2006.

2. Reason for which review has been sought is that learned

counsel for Applicant Union (Respondent No. 2 in original writ petition) could not appear on 12/12/2006 as on that day he had gone for medical check up at Clinic of his Doctor because of surgery then undergone by him. It is therefore apparent that indirectly the prayer is to re-hear the matter by giving opportunity to Applicant Union. The application has been opposed by Employer (original Petitioners) by pointing out that Applicant Union had requested for early final disposal of writ petition and accordingly the same was being listed for final hearing from 14/11/2006 every week continuously but nobody appeared for Applicant Union which was Respondent No 2 therein. It is contended that writ petition has been allowed on merits after considering the law on point and hence application as moved is not maintainable.

3. Accordingly, I have heard Advocate S.G. Loney for Applicant Union and Advocate A.R. Patil for Respondents No. 1 and 3 and learned AGP Shri Kankale for Respondent No. 2 - Industrial Court in Review Application.

Advocate Loney has contended that attention of this court was not invited to the relevant judgments which already clinched and

concluded the issue in favour of 54 employees. Attention has been invited to judgment of Hon'ble Apex Court in the case of State of Maharashtra vs R.S. Bhonde i.e. AIR 2005 S.C. 3740, and it has been stated that there present Respondents No. 1 and 3 were also appellants before Hon'ble Apex Court wherein challenge was to the judgment of Division Bench of this Bench of Bombay High Court. It is contended that in said judgment benefit has been given to seasonal employees who are identically situated at par with these 54 employees. The judgments of Hon'ble Apex Court in Mahatma Phule Agricultural University v. Nasik Zilla Sheth Kamgar Union, AIR 2001 SC 3228 & Ahmednagar Zilla Shetmajoor Union v. Dinkar Rao Kalyanrao Jagdale, (2001) 7 SCC 356, have also been relied upon for this purpose. Learned Advocate contends that these important rulings have not been brought to the notice of this Court and hence this Court has taken incorrect view in the matter. He has also invited attention to controversy considered by Industrial Court and the background in which said controversy has been considered. He has also invited attention to evidence of witness for Employer to contend that members of Applicant Union were being paid only Rs.24/- per day at the relevant time and has argued that all these aspects have not been

brought to the notice of this Court on 12/12/2006 resulting in this Court exercising the jurisdiction which otherwise was not available. He states that 54 employees are only entitled to recover arrears as per the order of Industrial Court and said order therefore needs to be maintained.

Advocate Patil, on the other hand, has contended that rulings on which learned Counsel for Applicant Union is keeping the reliance are not in favour of 54 employees but against them. He states that issue is appropriately considered by this Court in the light of the various subsequent judgments of Hon'ble Apex Court and and there is no error in exercise of jurisdiction at all. He has also invited attention to order of Industrial Court, to the judgment of this Court sought to be reviewed and also to subsequent judgments of Hon'ble Apex Court to state that present application of Applicant Union is misconceived and needs to be dismissed. Learned Counsel contended that invocation of review jurisdiction is itself misconceived & unsustainable.

4. In judgment dated 12/12/2006, I have made reference to various judgments including judgment of Constitutional Bench of Hon'ble Apex Court in case of Secretary, State of Karnataka vs. Umadevi

reported at A.I.R. 2006 SC 1806, other judgments of Hon'ble Apex Court in National Fertilisers Ltd. and others vs. Somvir Singh reported at A.I.R. 2006 SC 2319, Haryana State Electronic Corporation vs. Mamni reported at AIR 2006 SC 2427 and Mahendra I. Jain and others vs. Indore Development Authority and others reported at A.I.R. 2005 S.C. 1252. In judgment delivered on 31/8/2006, I have also taken support from judgments of Hon'ble Apex Court in Principal, Mehar Chand Polytechnic & Anr. vs. Anu Lamba JT 2006(7) SC 322, State of Gujarat & Anr. vs. Kaarshanbhai K. Rabri & Ors. JT 2006 (7) SC 56, Union of India vs. Manu Dev Arya - AIR 2004 Sc 2449 & Mineral Exploration Corporation Employees' Union vs. Mineral Exploration Corporation Ltd. & Anr. reported at JT 2006 (7) SC 151. All these judgments in no uncertain terms laid down that employee working on daily wages or the seasonal employee has no right to post and does not hold any post. He is not entitled to automatic regularisation and equal pay. Learned Counsel for Applicant Union has not even whispered that these rulings were not relevant for deciding controversy. On the contrary, he has chosen to rely upon 3 judgments mentioned above in his arguments to contend that controversy already stood concluded in favour of 54 Member

employees of Applicant Union. It is therefore necessary to consider only this aspect of the matter to find out whether any such concluded issue has been gone into by this Court. In order to appreciate said judgment in case of State of Maharashtra vs R.S. Bhonde (supra) it is first necessary to find out facts giving rise to U.L.P. Complaint filed by Applicant Union before the Industrial Court.

5. As pointed out by Advocate Loney, the Industrial Court has only partly allowed the complaint and granted declaration that Employer has indulged in unfair labour practice falling under items 5 and 9 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as MRTU Act for short) and rejected complaint insofar as unfair labour practice under item 6 of its Schedule IV is concerned. Employer has been directed to pay wages to 54 employees at par with employees in Award Reference (IDA) No 2/1987 decided on 6/2/1991 with arrears from 1/12/1992 to 26/1/1996. From paragraph 4 of order of Industrial Court it is apparent that after 27/1/1996 the U.L.P. Complaint was only restricted to and prosecuted for entitlement of equal pay for equal work at par with 96 workers involved in above referred award. Employees claiming

benefit were terminated on 27/1/1996 and hence Applicant Union abandoned claim for their regularisation and permanency. The Applicant Union or any of its 54 Members have not challenged this order of Industrial Court. It is therefore clear that only question to be adjudicated upon by Industrial Court was extending benefit of Award dated 6/2/1991 to these 54 employees. In the judgment dated 12/12/2006, I have noticed that award dated 6/2/1991 has been delivered in totally different background. It has been noticed that therein demand for classification i.e. categorisation of employees was considered and it has been recorded that 96 employees before Industrial Court in Award proceedings have been placed in specific categories like typist, grade-I mazdoors, grade-II mazdoors, laboratory assistants etc. by it and thereafter pay scales/wages for these occupations were directed to be extended to them. This was not the exercise undertaken by Industrial Court while deciding U.L.P. Complaint filed by present Applicant Union on 20/12/1996. Again, this finding recorded by me has not been disputed while arguing his Review by learned Counsel. Perusal of impugned order dated 20/12/1996 delivered by Industrial Court reveals that it has not ordered any such classification or categorisation and placement of 54

employees for whose benefit the present matter is being prosecuted. Without such finding on classification or categorisation or placement of individual employee, Industrial Court would not have proceeded to issue impugned direction. It is further clear that said Court has proceeded on the basis that concept of "equal pay for equal work" was well settled consistent principle which required no discussion and accordingly had proceeded to grant relief. It is also found that after noticing provisions of law applicable to Employer, said Court refused to adjudicate issue of grant of permanency to these 96 employees in any particular cader or grade. Merits of said exercise is beyond scrutiny here in respect of those 96 employees. However, the fact remains that said Court considered case of only 96 employees and 54 members of Applicant Union are not covered by said Award.

6. In the impugned order dated 20/12/1996, Industrial Court has tried to find out parity between 96 employees mentioned in the Award and 54 employees with whom Applicant Union is concerned. The principle of "equal pay for equal work" has been applied between these two sets. It has noticed that witness for employer admitted that these

54 employees were getting Rs. 31/- per day while 96 employees covered by Award were getting Rs. 66/- per day. Advocate Loney has also drawn my attention to evidence of one of the employees wherein he stated that said employees covered by Award were getting Rs. 49/- while they were getting Rs.24/- per day. Even witness for management has accepted that these 54 employees were working on the date of Award and have been doing same work as that of 96 employees covered by Award. He has stated that University (Employer) has been paying them minimum wages. However, Industrial Court has not considered individual cases to find out their possible classification or categorisation and also there is no such individual evidence and finding. When in view of subsequent judgments of Hon'ble Apex Court the application of doctrine of "equal pay for equal work" is itself not possible, it is clear that impugned exercise undertaken on 20/12/1996 by Industrial Court can also not be sustained. In any case this Court has already recorded a finding in favour of Employer in this respect and no case is being made out to have a re-look at it. Even otherwise such re-look is ruled out in limited Review jurisdiction. Ground on which review has been sought clearly demonstrates that Applicant Union wanted re-hearing which is

not possible.

7. This brings me to consider the cases on which Advocate Loney has placed reliance. The judgments of Hon'ble Apex Court in Mahatma Phule Agricultural University v. Nasik Zilla Sheth Kamgar Union, AIR 2001 SC 3228 & Ahmednagar Zilla Shetmajoor Union v. Dinkar Rao Kalyanrao Jagdale, (2001) 7 SCC 356, relied upon by Review Applicant Union are considered in State of Maharashtra vs. R.S. Bhonde i.e. AIR 2005 S.C. 3740, & hence I find it proper to mention last one to avoid prolixity. It was dispute between present Employer University and its employees only. There in ULP Complaint filed before it by group of Employees for grant of permanency and regularisation, the Industrial Court held that there was unfair labour practice and directed the respondent i.e. the University and the College to make said employees permanent subject to the approval of the State Government. Stand taken by present Employer University was with reference to Section 50(B) of the Punjabrao Krishi University (Krishi Vidyapeeth) Act, 1968, (in short the 'University Act'). Six writ petitions were filed by the University questioning correctness of the judgment rendered by the Industrial Court. A learned Single Judge of

this Bench in Writ Petition No.143/1983 along with writ petition Nos. 170/1983, 1171/1982, 1172/1982, 1173/1982, 1174/1982 held that the order passed in the complaint cases was to be modified to the extent that for the words "subject to the approval of the State Government" in each of the case the words "subject to the prior approval of the State Government" were to be substituted in view of Section 50(B). Thereafter, ten persons who were respondents herein filed a writ petition to implement the order of the Industrial Court. By the judgment impugned before Hon'ble Apex Court this Court held that the Industrial Court's order was to be modified by excluding the words "subject to the approval of the State Government". Accordingly, Court directed that all the respondents were to be treated as permanent employees with all benefits w.e.f. 7.11.1983 i.e. the day on which Section 50(B) of the University Act was repealed by Maharashtra Agricultural Universities (Krishi Vidyapeeth) Act, 1983 in (short the 1983 Act) as there was no provision similar to Section 50(B) of the Act in 1983 Act, therefore, the question of any approval much less prior approval of the State Government did not arise or survive. It is in this background that Hon'ble Apex Court observed as under in paragraph 6 :--

"6. It is to be noted ---------.....----------one counts. Firstly, the order in writ petition No.143/83 and other connected cases dated 25th July, 1983 had become final and there was no challenge to it. Prayer in the subsequent writ petition to enforce Industrial Court's Order is clearly not maintainable. Merely because Section 50(B) of the Act was repealed that did not take away the effect of the order passed by the High Court in the earlier cases. The prayer for enforcement of the Industrial Court's order in its original form could not have been made, when the same had been modified by the High Court's order which had attained finality."

8. Additionally, as observed by this Court in Mahatma Phule Agricultural University and Ors. v. Nasik Zilla Sheth Kamgar Union and Ors. (2001 (7) SCC 346) the status of permanency cannot be granted when there is no post. Again in Ahmadnagar Zilla Shetmajoor Union v. Dinkar Rao Kalyanrao Jagdale (2001 (7) SCC 356), it was held that mere continuance every year of seasonal work obviously during the period when the work was available does not constitute a permanent status unless there exists posts and regularization is done.

9. Above being the position, the impugned judgment of the High

Court cannot be maintained and is set aside. It is, however, not in dispute that except respondent No.8 who has died in the meantime the others have been at points of time regularized. The regularization shall take effect from the respective dates of order in that regard as passed by the authority and not from 7.11.1983 as directed by the High Court."

Absence of provision like S.50(B) in later 1983 Act gave rise to controversy and it is therefore obvious that there is nothing in this judgment which helps Applicant Union in present Review. Here controversy was never settled finally and W.P. 775 of 1997 filed by Employer assailing order of Industrial Court has been decided by me as per law on 12/12/2006.

10. I, therefore, find that no case is made out for Review and the same is accordingly dismissed with no order as to costs.

JUDGE

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*dragon.